

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting the amendatory and directory language in Sections 1 through 3 in their entirety and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 7, Part 8, is amended by deleting it in its entirety and by substituting instead the following:

49-7-801. Short title. This part shall be known and may be cited as the "Tennessee Baccalaureate Education System Trust Act."

49-7-802. Definitions. As used in this part, except where the context clearly requires otherwise:

(1) "Beneficiary" means an individual designated under a tuition contract as the individual entitled to apply tuition units purchased under the contract to the payment of that individual's undergraduate, graduate and professional tuition. The individual must have been a resident of this state at the time the contract was purchased;

(2) "Board" means the board of trustees of the baccalaureate education system trust fund program described in this part;

(3) "Institution of higher education" means a state institution of higher education, an accredited private college, university, or other postsecondary institution located inside this state that is accredited by an accrediting organization or professional association recognized by the board, or an accredited college, university or other postsecondary institution located outside this state that is accredited by an accrediting organization or professional association recognized by the board;

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

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FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(4) "Program" means the baccalaureate education system trust fund program created in this part;

(5) "Purchaser" means an individual who enters into a tuition contract under this part for the purchase of a tuition unit or units on behalf of a beneficiary;

(6) "State institution of higher education" means the colleges, universities, branches or units thereof under the control and direction of either the board of trustees of the University of Tennessee or the board of trustees of the state university and community college system;

(7) "Tuition" means the charges imposed to attend an institution of higher education as an undergraduate, graduate, or professional student and all fees required as a condition of enrollment as determined by the board. "Tuition" does not include fees charged to out-of-state residents by institutions of higher education, laboratory fees, room and board or other similar fees and charges;

(8) "Tuition contract" means a contract entered into under this part by the board and a purchaser to provide for the payment of higher education tuition and required fees of a beneficiary;

(9) "Tuition unit" means a unit of the program purchased under § 49-7-807 on behalf of a beneficiary; and

(10) "Weighted average tuition" means the tuition cost resulting from the following calculation:

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

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Date _____

Time _____

Clerk _____

Comm. Amdt. _____

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House Bill No. 2946

(A) Add the products of the annual undergraduate tuition at each Tennessee four-year public university multiplied by that institution's total number of undergraduate full-time equivalent students; and

(B) Divide the gross total of the products from subdivision (10)(A) of this section by the total number of undergraduate full-time equivalent students attending Tennessee's four-year public universities.

49-7-803. Purpose. Article XI, Section 12, of the Constitution of Tennessee manifests the intention of the citizens of this state that the advancement and improvement of higher education in the state of Tennessee is an essential governmental function and purpose of this state. Pursuant thereto, the general assembly of this state hereby finds that the creation of a trust program, as an agency and instrumentality of the state of Tennessee, to assist students or their families in financing a portion of the costs of attending colleges and universities will increase the number of students who will seek to attend a college or university, and will, therefore, advance and improve higher education in this state. It is, therefore, the legislative intent of this part to establish an educational trust fund as an agency and instrumentality of the state of Tennessee to assist students to pay in advance the tuition cost of attending colleges and universities and thereby to encourage such students to attend a college or university. In establishing the trust program, it is further the intent of the general assembly to encourage timely financial planning for higher education by the creation of tuition contracts, and to provide assistance and incentives for the purchase of tuition contracts for the benefit of the children of the people of this state.

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

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House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

47-7-804. Creation of board of trustees - Members.

(a) There is hereby created a board of trustees of the program composed of seven (7) members as follows:

- (1) the state treasurer, ex officio;
- (2) the comptroller of the treasury, ex officio;
- (3) the commissioner of finance and administration, ex officio;
- (4) the secretary of state, ex officio;
- (5) the chancellor of the state board of regents, ex officio;
- (6) the president of the University of Tennessee system, ex officio;
- (7) the executive director of the Tennessee student assistance corporation, ex officio;

and

- (8) the executive director of the Tennessee higher education commission, ex officio.

(b) Members of the board may designate members of their respective staffs to attend meetings of the board and to exercise their right to vote in their absence. Such designations shall be in writing to the board chair and filed with the secretary of state. The state treasurer shall serve as chair of the board.

(c) Members of the board shall serve without compensation but shall receive reasonable reimbursement for actual and necessary travel expenses in accordance with the travel regulations promulgated by the department of finance and administration and approved by the attorney general and reporter.

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

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House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(d) A majority of the members of the board serving shall constitute a quorum for the transaction of business at a meeting of the board. Voting upon action taken by the board shall be conducted by a majority vote of the members present at the meeting of the board. The board shall meet at the call of the chair and as may be otherwise provided in any rules or regulations promulgated by the board pursuant to § 49-7-805(15). Meetings of the board may be held anywhere within the state.

(e) The business of the board shall be conducted at meetings of the board held in compliance with Title 8, Chapter 44. All records of the board shall be made available to the public in compliance with Title 10, Chapter 7.

(f) The board is attached to the department of treasury, as a division thereof, for all administrative purposes.

49-7-805. Board - Powers and Duties. In addition to the powers granted by any other provisions of this part, the board shall have, as agents of this state, the powers necessary or convenient to carry out the purposes and provisions of this part, the purposes and objectives of the program and the powers delegated by any other law of this state including, but not limited to, the following express powers:

(1) To invest any funds of the trust fund in any instrument, obligation, security, or property that constitutes legal investments for assets of the Tennessee consolidated retirement system as described in § 8-37-104;

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

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House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(2) Purchase insurance from insurers licensed to do business in this state providing for coverage against any loss in connection with the program's property, assets, or activities or to further ensure the value of tuition units;

(3) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise and discharge of the powers and duties of the board;

(4) Contract for the provision of all or any part of the services necessary for the management and operation of the program;

(5) Contract with financial consultants, actuaries, auditors, and other consultants as necessary to carry out its responsibilities under this part;

(6) Promote, advertise and publicize the program;

(7) To solicit and accept monetary gifts, including monetary gifts made by will, trust or other disposition, grants, loans, and other monetary aids from any personal source or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this part;

(8) To impose reasonable requirements on the eligibility of individuals to be designated as beneficiaries of tuition contracts, including without limitation, residency and age requirements;

(9) To impose reasonable limits on the number of contract participants in the program at any given period of time;

(10) To impose and collect application fees and other administrative fees and charges in connection with any transaction under this part;

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(11) To impose limits on the number of units which may be purchased on behalf of any beneficiary;

(12) To impose restrictions on the substitution of another individual for the original beneficiary;

(13) To define the terms and conditions under which payments may be withdrawn from the program and to impose reasonable charges for such withdrawal;

(14) To impose reasonable time limits on the use of the tuition benefits provided by the program; and

(15) To promulgate reasonable substantive and procedural rules as are necessary to carry out the purpose and intent of this part. Such rules shall be adopted pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

49-7-806. Plan for the Sale of Tuition Units. The board shall develop a plan for the sale of tuition units. The board shall determine annually the weighted average tuition of Tennessee's four-year public universities in the academic year that begins on or after the first day of August of the then current calendar year, and shall establish the price of a tuition unit in the ensuing sales period. Such price shall be based on sound actuarial principles, and shall, to the extent actuarially possible, reasonably approximate one percent (1%) of the weighted average tuition for the academic year, plus the costs of administering the tuition unit program and any amount necessary to ensure the program remains actuarially sound. The sales period to which such price applies shall consist of twelve (12) months, and the board shall establish the date on which the sales period begins. The board may impose and collect additional

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

administrative fees and charges in connection with the sale of tuition units. To promote the purchase of tuition units and in accordance with actuarially sound principles, the board may adjust the sales price as part of incentive programs.

49-7-807. Tuition payment contracts. (a) The board may enter into a tuition contract with a purchaser for the purchase of tuition units on behalf of a beneficiary. A tuition contract shall allow the purchaser to purchase tuition units on behalf of a beneficiary at the price determined by the board pursuant to § 49-7-806 for the year in which the tuition unit is purchased. Each tuition unit purchased on behalf of a beneficiary shall entitle the beneficiary to an amount equal to one percent (1%) of the weighted average tuition during the academic term in which it is used.

(b) The following information shall be disclosed in writing to each purchaser of tuition units:

- (1) The terms and conditions for purchasing tuition units;
- (2) The name and date of birth of the beneficiary of the contract, and the terms and conditions under which another person may be substituted as the beneficiary;
- (3) The person entitled to terminate the contract;
- (4) The terms and conditions under which the contract may be terminated and the amount of the refund, if any, to which the person terminating the contract, or that person's designee, is entitled upon termination;
- (5) The method by which tuition units shall be applied toward payment of tuition if in any academic term the beneficiary is a part-time student;

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(6) The period of time during which the beneficiary must claim benefits through the program;

(7) The obligation of the board to make payments on behalf of a beneficiary under subsection (a) of this section based upon the number of tuition units purchased on behalf of the beneficiary;

(8) The terms and conditions under which money may be wholly or partially withdrawn from the program, including, but not limited to, any reasonable charges and fees that may be imposed for withdrawal;

(9) The obligation of the board to pay directly to the institution of higher education in which the beneficiary is enrolled the amount represented by the tuition units being used that term; and

(10) Such other terms, conditions, and provisions the board considers, in its sole discretion, to be necessary or appropriate.

49-7-808. No promise or guarantee of admission. (a) Nothing in this part nor in a tuition contract entered into pursuant to this part shall be construed as a promise or guarantee by the state, the board or any institution of higher education that a beneficiary will:

(1) be admitted to an institution of higher education or to a particular institution of higher education;

(2) be allowed to continue to attend an institution of higher education after having been admitted; or

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

(3) graduate from an institution of higher education.

(b) Each tuition unit shall cover the cost of the beneficiary's tuition in an amount no greater than one percent (1%) of the weighted average tuition in effect at Tennessee's four-year public universities at the time of use.

49-7-809. Contract Termination or Refund. (a)(1) A tuition contract may be terminated under any of the following conditions upon written request to the board by the person or combination of persons authorized to do so in the contract:

(A) the death or permanent disability of the beneficiary;

(B) the beneficiary is age eighteen (18) or older and has decided not to attend an institution of higher education;

(C) the beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an institution of higher education and the beneficiary does not plan to pursue further education;

(D) the beneficiary has completed the bachelor's degree requirements at an institution of higher education; or

(E) the beneficiary has completed the bachelor's degree requirements at an institution of higher education in fewer than twelve (12) quarters, eight (8) semesters, or their equivalent.

(2) A tuition contract may also be terminated upon the occurrence of other circumstances determined by the board to be grounds for termination.

(b) The board shall determine the amount of the refund to which the person

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

designated in the contract is entitled upon a contract termination. Except for refunds made pursuant to § 49-7-822, the amount of such refund shall not be less than the total purchase price of all tuition units purchased for the beneficiary and not used.

(c) The board shall further determine the method and schedule for payment of refunds upon termination of a tuition contract.

(d) If a beneficiary is the recipient of a scholarship, a waiver of tuition, or similar subvention that the board determines cannot be converted into money by the beneficiary, the board shall, during each academic term that the beneficiary furnishes the board such information about the scholarship, waiver or similar subvention as the board requires, refund to the person designated in the contract an amount determined by the board pursuant to subsection (b) of this section; provided that such amount shall not be less than the total purchase price of the tuition units that are not needed on account of the scholarship, waiver, or similar subvention for that term at the institution of higher education where the beneficiary is enrolled. The board may, at its sole option, designate the institution of higher education at which the beneficiary is enrolled as the agent of the board for purposes of refunds pursuant to this subsection (d).

(e) If, in any academic term for which tuition units have been used to pay all or part of a beneficiary's tuition, the beneficiary withdraws from the institution of higher education at which the beneficiary is enrolled prior to the end of the academic term, a pro rata share of any refund of tuition as a result of the withdrawal equal to that portion of the tuition paid with tuition

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

units shall be made to the board, unless the board designates a different procedure. The board shall credit any refund received, less any reasonable charges and fees provided for by the board, to the appropriate account established pursuant to § 49-7-810(b).

(f) If, after a specified period of time, the contract has not been terminated nor the beneficiary's rights exercised, the board may terminate the contract and report the refund amount to the state treasurer pursuant to Title 66, Chapter 29, Part 1. The refund amount shall be determined by the board pursuant to subsection (b) of this section. Prior to any such termination, the board shall make a reasonable effort to contact the purchaser, the beneficiary, and any person designated in the contract to act on behalf of the purchaser or the beneficiary.

49-7-810. Creation of the Tennessee Baccalaureate Education System Trust Fund. (a) There is hereby created the Tennessee baccalaureate education system trust fund. The trust fund shall consist of payments received by the board from purchasers on behalf of beneficiaries or from any other source, public or private; all interest and investment income earned by the fund; any monetary gift of any nature made by any individual by testamentary disposition, including without limitation, any specific monetary gift or bequeath made by will, trust or other disposition; and all other receipts of the board from any other source which the board determines appropriate. The fund may be divided into separate accounts as may be determined by the board.

(b) The board shall maintain an account for each tuition contract showing the

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

beneficiary of that contract and the number of tuition units purchased pursuant to that contract.

(c) The assets of the fund shall be preserved, invested and expended solely pursuant to and for the purposes of this part and shall not be loaned or otherwise transferred or used for any other purpose. The assets of the fund shall be expended solely:

(1) to make payments to institutions of higher education on behalf of beneficiaries pursuant to § 49-7-807(a);

(2) to make refunds as provided in § 49-7-809; and

(3) to pay the investment fees and other costs of administering the fund.

49-7-811. Custodian of funds - Disbursements. The state treasurer shall be the custodian of the trust fund, and the facilities and employees of the state treasurer shall be used and employed in the administration of the fund including, but not limited to, the keeping of records, the management of bank accounts and other investments, the transfer of funds, and the safekeeping of securities evidencing investments.

49-7-812. Investments. The board shall establish the investment policy for the trust fund. The board may authorize assets of the trust fund to be invested in any instrument, obligation, security, or property that constitutes legal investments for assets of the Tennessee consolidated retirement system. The board may authorize assets of the fund to be pooled for investment purposes with the assets of the Tennessee consolidated retirement system or any other assets under the custody of the state treasurer.

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

49-7-813. Powers of fund trustees. Subject to the limitations in § 49-7-812, the board, or its nominee, has full power to hold, purchase, sell, assign, transfer, or dispose of any of the securities or investments in which the assets of the fund have been invested as well as of the proceeds of such investments and any moneys belonging to the fund.

49-7-814. Transaction of business - Nominees. All of the board's business shall be transacted, all of its funds invested, all warrants for money drawn, any payments made, and all of its cash and securities and other property shall be held:

(1) In the name of the board;

(2) In the name of its nominee; provided, that the nominee is authorized by board resolution solely for the purpose of facilitating the transfer of securities and restricted to members of the board, or a partnership composed of any such members; or

(3) For the account of the board or its nominee in such forms as are standard in the investment community for the timely transaction of business or ownership identification, such as book entry accounts.

49-7-815. Personal interest in investments prohibited. Except as otherwise provided, no board member nor employee of the board shall have any personal interest in the gains or profits of any investment made by the board; nor shall any board member or employee of the board, directly or indirectly, for such member or employee or as an agent, in any manner for such member or employee or as an agent, in any manner use the same except to make such current and necessary payments as are authorized by the board; nor shall any member or employee of the board become an endorser or surety, or in any

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

manner an obligor, for money loaned to or borrowed from the board.

49-7-816. Delegation to treasurer of implementation of policy.

(a) Implementation of the policy established by the board may be delegated by the board to the state treasurer who shall put such policy into effect.

(b) Subject to the delegation of the board, the state treasurer shall have full power to invest and reinvest the assets of the trust fund.

49-7-817. Authorization to contract for investment management services.

(a) Notwithstanding any other provision of the law to the contrary, the board may, at its option, contract for investment management services for the assets of the trust fund and to provide for the powers, duties, functions and compensation of any investment managers so engaged. Any contract for such investment management services shall be procured in the manner prescribed by the board.

(b) All expenses and fees incidental to such outside investment management may, at the board's sole discretion, be charged to and paid from the earnings of the fund.

49-7-818. Actuarial soundness of fund.

(a) The board shall obtain appropriate actuarial assistance to establish, and maintain, and certify a fund sufficient to defray the obligation of the trust fund. The actuary shall recommend to the board, and the board shall adopt actuarial assumptions and appropriate actuarial tables for use in all calculations in connection with the program.

(b) At least once in each six (6) year period, the actuary shall make an actuarial investigation into the assumptions and tables used in the program, and taking into account

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

the results of such investigation, the board shall adopt for the program such actuarial assumptions and tables as are deemed necessary.

(c) The board of trustees shall keep in convenient form such data as shall be necessary for actuarial valuation of the fund and for checking the experience of the program.

(d) On the basis of such tables and assumptions as the board of trustees shall adopt, the actuary shall make a valuation, at least once each year, of the assets and liabilities of the fund.

49-7-819. Cooperation from other state agencies. The board may call upon other departments and agencies of this state for assistance in carrying out the purpose and intent of this part, including, but not limited to, the office of vital records. Notwithstanding any other provision of law to the contrary, the office of vital records shall provide to the board, without charge, vital records' information.

49-7-820. Exemption of assets and benefits from taxation, execution, garnishment and assignment. All property, cash and assets of the fund, and all tuition contracts and the units purchased pursuant thereto are exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, the operation of bankruptcy, the insolvency laws or other process whatsoever, nor shall any assignment thereof be enforceable in any court.

49-7-821. Termination or modification of program. If the board determines the program is, for any reason, financially unfeasible, or is not beneficial to the citizens of this state or to the state itself, the board may suspend or terminate the program

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

immediately.

49-7-822. Effect of termination of program on contract.

(a) Unless otherwise provided by the board, a tuition contract remains in effect after the program is terminated if, when the program is terminated, the beneficiary:

- (1) has been accepted by or is enrolled in an institution of higher education; or
- (2) is projected to graduate from high school not later than the third anniversary of the date the program is terminated.

(b) A tuition contract terminates when the program is terminated if the contract does not remain in effect under subsection (a) of this section. In such event, a refund shall be made to the person designated in the contract to receive the same. The amount of any such refund shall be determined by the board.

(c) Any assets remaining after all obligations of this section and the costs of administering the program have been satisfied shall be transferred to the state general fund.

49-7-823. Ruling requests. (a) The board shall request rulings from:

(1) the Internal Revenue Service regarding the tax consequences to the program, and to the purchasers and beneficiaries of the tuition contracts; and

(2) the Securities and Exchange Commission regarding the application of federal securities laws to the fund.

(b) Implementation of the program shall not be contingent upon the receipt of such rulings.

HOUSE EDUCATION COMMITTEE AMENDMENT

AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 2530*

House Bill No. 2946

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

SECTION 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it, provided that no funds shall be received or tuition contracts entered into until such time as the board shall determine.